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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

BENSON MILLS CO., INC.,

Plaintiff,

-against-

BRODER MFG. INC. and MARTIN BRODER,

Defendants.

Case No. 09 CIV _____

(_____, J.)

COMPLAINT

GLASSER, J.

MANN, M.J.

Plaintiff, by its attorneys, for its Complaint against the defendants, alleges:

JURISDICTION AND VENUE

1. This cause of action for copyright infringement arises under the Copyright Laws of the United States, 17 U.S.C. § 101, et. seq.

2. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, as this is an action arising under the laws of the United States relating to copyrights.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), as this is the district where all defendants reside, and in which a substantial part of the events or omissions giving rise to the claims occurred.

4. Plaintiff Benson Mills Co., Inc. (hereinafter "Plaintiff" or "Benson") is a corporation organized under the laws of the State of New York, with an office and place of business at 140 58th Street, Building A, Unit 7J, Brooklyn, New York 11220.

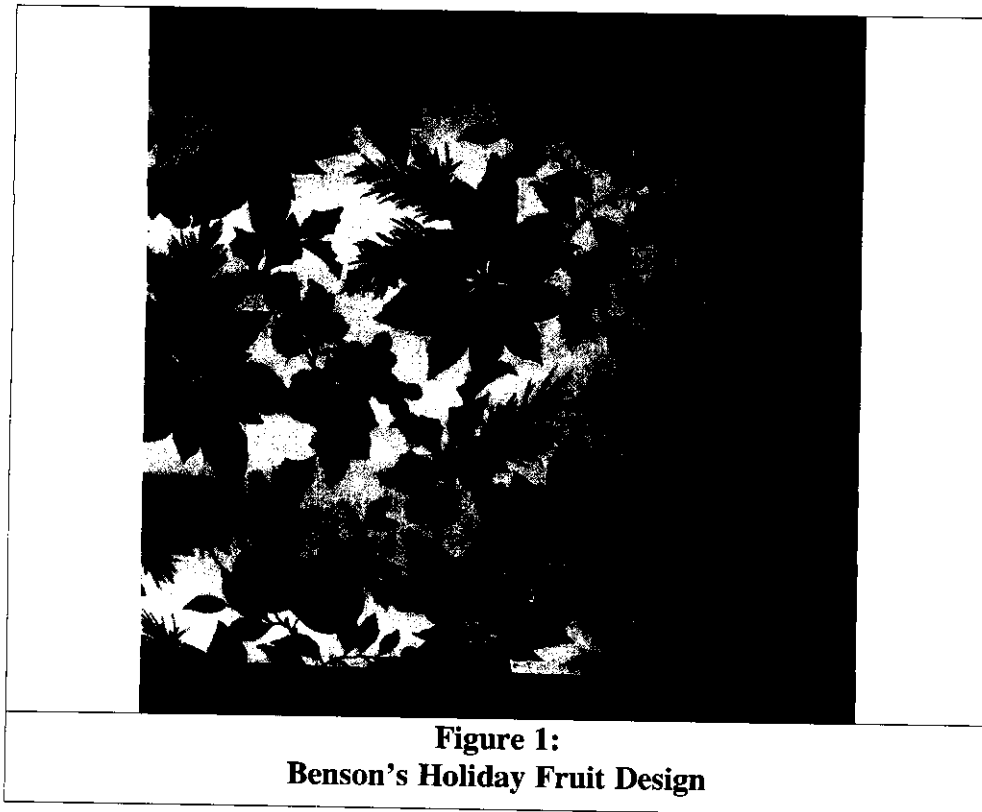
5. Upon information and belief, defendant Broder Mfg., Inc. is a New York corporation having a place of business at 566 Johnson Avenue, Brooklyn, New York 11237 and/or at 310 Madison Avenue, Suite 1513, New York, New York 10017. Upon information and belief defendant Martin Broder resides and/or works within the County of Kings, State of New York (defendants hereinafter collectively referred to as "Broder").

6. Plaintiff has been for years, and continues to be, a well-known and well-regarded manufacturer, designer, and wholesaler in the linens business.

7. In or about 2003, Benson created, acquired, and/or authored (itself or as a work made for hire) the unique and proprietary graphic design it refers to as "Holiday Fruit."

Such designs, with all of the copyrightable elements thereof (together, the "Copyright"), were first published by Benson in or about 2003. Plaintiff has used the design on its linens products and additionally used the designs on catalogs and otherwise in the conduct of its business.

A copy of the Copyright design is set forth herein as Figure 1.



8. Benson is the owner of all rights, title, and interest in and to the Copyright throughout the United States.

9. The Copyright is copyrightable subject matter under the Copyright Laws of the United States, 17 U.S.C. § 101, et. seq.

10. On or about October 27, 2004, Benson received United States Copyright Certificates of Registration Nos. VAu 642-077 for the Copyright. These registrations are valid and fully subsisting and are annexed hereto as Exhibit A.

The Defendants' Infringement

11. Upon information and belief, the defendants are in the business of, among other things, producing, distributing, offering for sale and selling linens and related merchandise, nationwide.

12. Upon information and belief, defendants, having full knowledge of the copyright rights of plaintiff as alleged herein, has infringed plaintiff's copyright by manufacturing or having manufactured for it, printing or having printed for it, reprinting or having reprinted for it, publishing, displaying, vending, distributing, selling, promoting and/or advertising linens/tablecloths which utilize therein. All of the activities of the defendants are in violation of the rights of plaintiff under 17 U.S.C. Sec. 101 *et seq.*

13. Such conduct by the defendants is without the permission, license or consent of the plaintiff and will continue to cause irreparable injury unless enjoined by the Court, since plaintiff lacks an adequate remedy at law.

14. On information and belief, the defendants had and have access to Benson's Copyrights as a result of Benson's open use, display, and sales of goods that comprise or incorporate the Copyrights.

15. On information and belief, Defendants knowingly, willfully and intentionally infringed on Benson's Copyrights by copying and distributing linens/tablecloths bearing the Copyrights in violation of 17 U.S.C. § 502 *et seq.*

16. In or about October, 2004, the defendant had infringed the Copyright and the plaintiff sent a "cease-and-desist" letter to the defendant Broder.

17. A sample of the defendant's 2004 product appears as Figure 2:

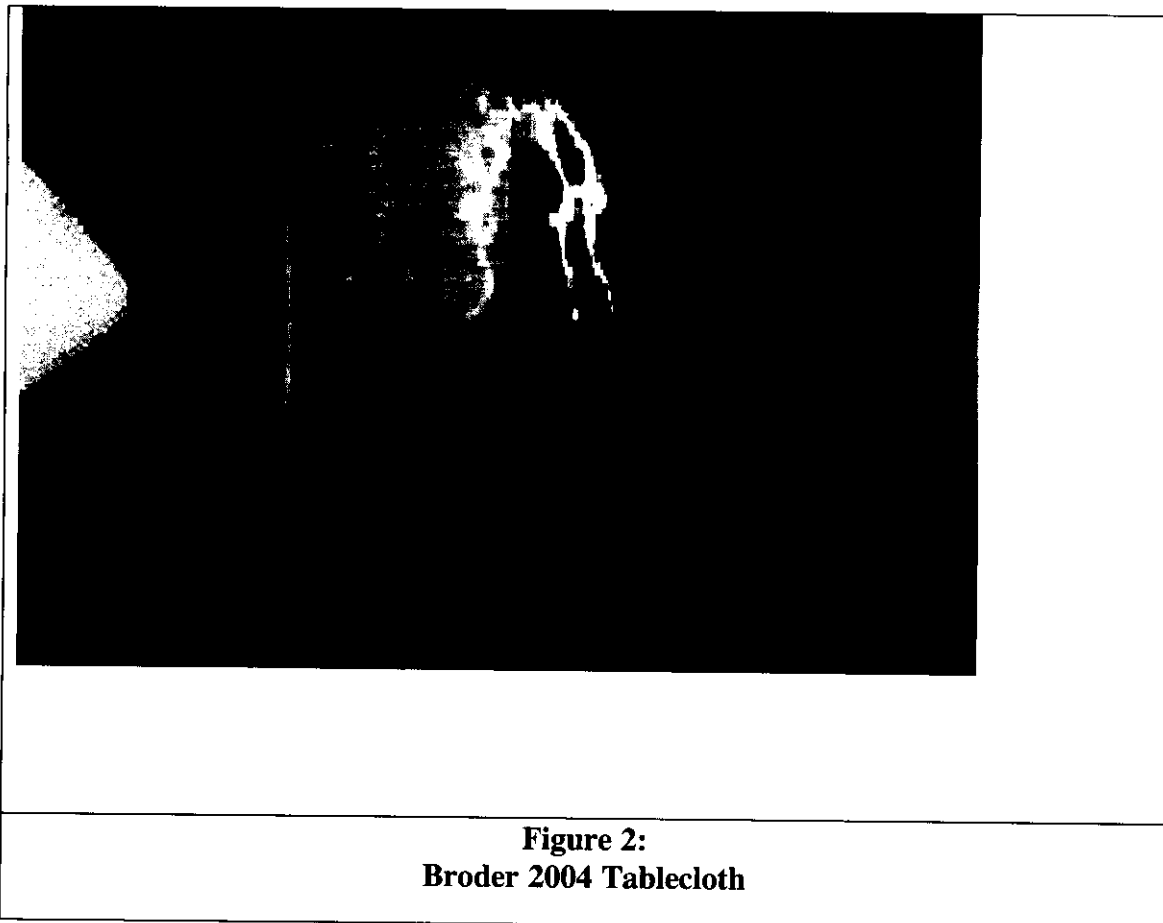


Figure 2:
Broder 2004 Tablecloth

18. On or about November 2004, defendant responded as follows (re-typed):

BRODER MANUFACTURING, INC.
566 Johnson Avenue
Brooklyn, NY 11237
Tel #718-366-1667
Fax# 718-386-9671

To: Benson Sales
From: Broder Manufacturing Inc.

Dear Keith Levy,

I have received your copyright letter, informing me of the two (2) Christmas patterns in question. You have stated that these are your designs exclusively with a copyright to them.

Please forward to me a validated form "VA" so that I can discuss this matter with my mill in China. I will inform you as to their position regarding this matter.

We have had a long and friendly relationship and wish to work this matter out to our mutual satisfaction.

Sincerely,

Martin Broder

19. The plaintiff believed the matter to be resolved at that point.
20. Yet, in or around December 2008, the plaintiff or its agent purchased, at retail, a 4-pack cloth napkin set bearing the Copyright.

21. A sample of the defendant's 2008 product appears as Figure 3:

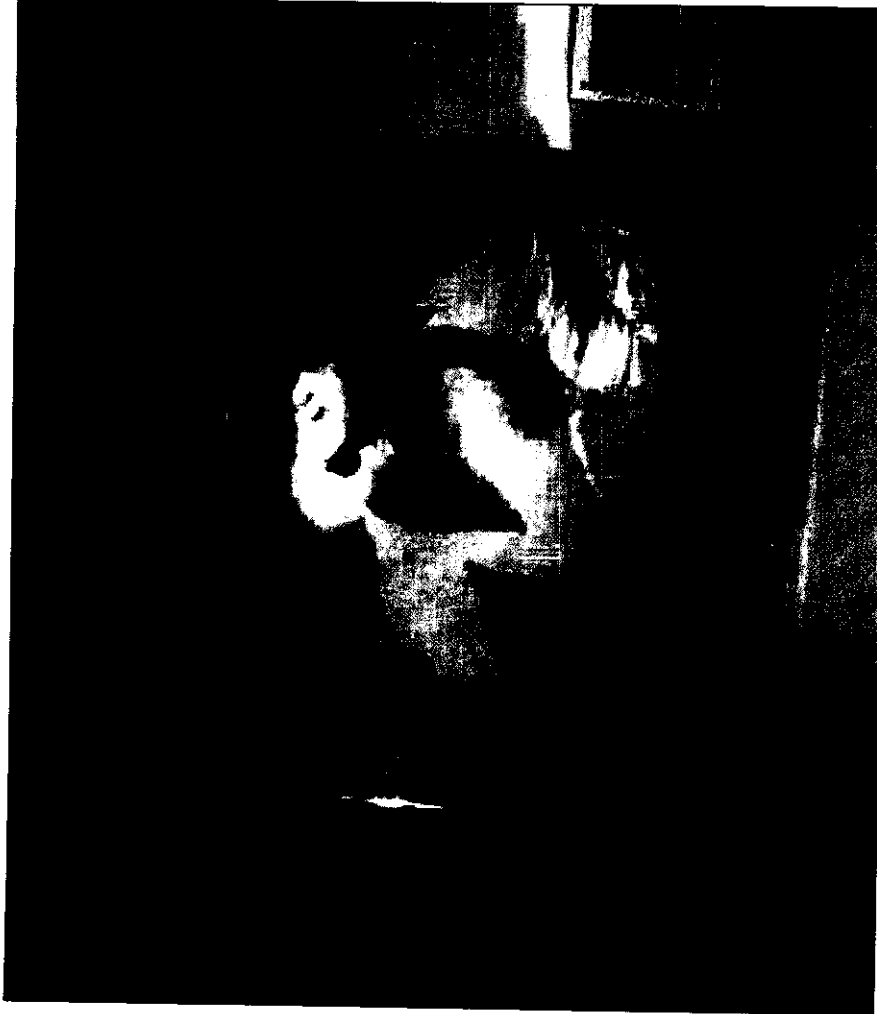


Figure 3:
Broder 2008 Cloth Napkins

FIRST COUNT FOR COPYRIGHT INFRINGEMENT

22. Plaintiff repeats and realleges its allegations, above.

23. Plaintiff has gone to great expense in producing and promoting the sale of fabrics bearing its Copyright.

24. Plaintiff's Copyright incorporates carefully prepared and fashionable color combinations, which color combinations have aided greatly in the sale of fabrics bearing the Copyright.

25. As a result of plaintiff's expenditure of money and skill in the promotion for sale of fabrics bearing plaintiff's Copyright, the design and fabrics have acquired a substantial market value in the trade.

26. Defendants have a design obviously copied from plaintiff's Copyright, which copy defendants have been offering and continue to offer for sale. The design printed on defendants' products is substantially similar to plaintiff's Copyright.

27. Defendants' infringing design is unmistakably copied from plaintiff's design.

28. Defendants' products when viewed by a consumer, would appear to be identical with a product of like style bearing plaintiff's Copyright.

29. Defendants, by their acts as aforesaid, have taken advantage of the knowledge and skill of plaintiff and of the good will developed by plaintiff and have capitalized upon the market created for plaintiff's design.

30. By defendants' use of a design and color combination virtually identical with plaintiff's design and color combination, defendants have been and will continue to be able to pass off and sell their products as a substitute for the products sold by customers of plaintiff.

31. The aforesaid acts of defendants in copying plaintiff's design and color combination and selling copies of same constitutes inequitable conduct, unfair trade practices and unfair competition in that defendants have thereby misappropriated plaintiff's good will and the benefits of plaintiff's knowledge, skill and expenditures in the promotion of the distinctive design and color combination, and by reason of the sale of defendants' products in competition with the plaintiff's sales of fabrics imprinted with the Copyright has caused irreparable injury to plaintiff in that plaintiff's market has been greatly reduced thereby, which injury will continue so long as defendants continue to market the copied design.

32. Plaintiff has been damaged by the acts of defendants alleged herein in an amount not as yet known, but believed to be in excess of Two Hundred Thousand (\$200,000.00) Dollars. The infringing activities of defendants are further and continuously damaging plaintiff in a manner for which plaintiff has no adequate remedy at law.

SECOND COUNT

33. Plaintiff repeats and re-alleges the above paragraphs, as if fully set forth herein.

34. Defendants have been unjustly enriched and plaintiff is entitled to an accounting of defendant's profits, plaintiff's damages and the costs of the action, together with plaintiff's attorneys' fees.

35. Defendants' foregoing activities have damaged the plaintiff in an amount as yet unknown.

THIRD COUNT FOR COMMON LAW UNFAIR COMPETITION

36. Plaintiff repeats and re-alleges the above paragraphs, as if fully set forth herein.

37. Defendants' distribution, sales and offers for sale of products bearing Benson's Copyrights constitute unfair competition under the common law of the State of New York.

38. Defendants' conduct has caused damage to Benson in an amount to be determined at trial, and unless restrained, will continue to seriously and irreparably damage Benson, for which there is no adequate remedy at law.

WHEREFORE, plaintiff demands:

A. That defendants, its officers, agents, servants, heirs, employees, successors, assigns, subsidiaries and affiliates, and all persons in privity with it, or any of them, be permanently enjoined from infringing the copyright of plaintiff in the Copyrights alleged herein, in any manner including, but not limited to, manufacturing or having manufactured for it, printing or having printed for it, reprinting or having reprinted for it, illustrating, publishing, displaying, vending, distributing, offering to sell, selling, shipping, importing, delivering, promoting, and/or advertising any copies of such works which are the subject of said copyright, including but not limited to an injunction against defendants from dealing in any goods sold with the copyrighted designs at issue herein, or causing and/or participating in such manufacturing, printing, reprinting, publishing, displaying, distributing, offering to sell, selling, shipping, importing, promoting, or advertising of copies of such work.

B. That defendants be required to deliver up for destruction all infringing copies of plaintiff's copyrighted items in its possession or under its control, and to deliver up for destruction all material implementing such infringing work.

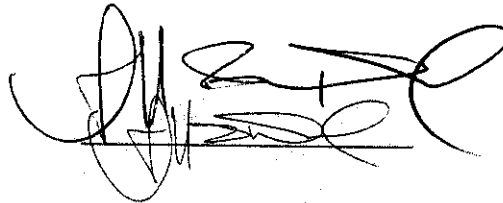
C. That defendants be directed to file with this Court and serve upon plaintiff within thirty (30) days after service of the injunction demanded above, a report, in writing and under oath, setting forth in detail the manner and form in which defendants have complied with the injunction.

D. For an award of damages, including an accounting of defendants' profits, plaintiff's damages, compensatory and punitive damages, as are appropriate in view of the willful conduct on the part of defendants, in an amount to be determined at trial, but in no event less than \$200,000.00.

E. For an award of plaintiff's costs in this action, including reasonable attorneys' fees and expenses.

F. For an award of such other relief that this Court may deem just and proper.

Dated: New York, New York
February 4, 2009



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(212) 502-6150
Attorneys for Plaintiff
Benson Mills Co., Inc.

To: **BRODER MANUFACTURING, INC.**
566 Johnson Avenue
Brooklyn, New York 11237
718-366-1667
Fax: 718-386-9671

MARTIN BRODER
566 Johnson Avenue
Brooklyn, New York 11237

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America



Form VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

VAu642-077



10-27-04
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

1

Title of This Work ▼

NATURE OF THIS WORK ▼ See Instructions

HOLIDAY FRUIT

FABRIC DESIGN

Previous or Alternative Titles ▼

Publication as a Contribution: If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published as a periodical or serial give Volume ▼

Number ▼

Issue Date ▼

On Page ▼

2

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

a BENSON MILLS CO, INC.

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR
Citizen of USA
Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes" see detailed instructions

Nature of Authorship Check appropriate box(es) See Instructions

☒ 3-Dimensional sculpture
☒ 2-Dimensional artwork
☐ Reproduction of work of art
☐ Map
☐ Photograph
☐ Jewelry design
☐ Technical drawing
☐ Text
☐ Architectural work

Name of Author ▼

Dates of Birth and Death
Year Born ▼ Year Died ▼

b
Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

Author's Nationality or Domicile
Name of Country
OR
Citizen of
Domiciled in

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes" see detailed instructions

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☐ 3-Dimensional sculpture
☐ 2-Dimensional artwork
☐ Reproduction of work of art
☐ Map
☐ Photograph
☐ Jewelry design
☐ Technical drawing
☐ Text
☐ Architectural work

3

Year in Which Creation of This Work Was Completed

a 2003

This information must be given by all authors.

Date and Nation of First Publication of This Particular Work

b Complete this information ONLY if this work has been published.

Month Day Year Nation

4

See instructions before completing this space

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

BENSON MILLS CO, INC.
6813 20TH AVENUE
Brooklyn, NY 11204

Transfer if the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2 give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

OCT 27 2004

ONE DEPOSIT RECEIVED

OCT 27 2004

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK ►

Complete all applicable spaces (numbers 3-4) on the reverse side of this page.
See detailed instructions Sign the form at line 5

DO NOT WRITE HERE

Page 1 of _____ pages

EXAMINED BY	FORM VA
CHECKED BY	
<input type="checkbox"/> CORRESPONDENCE	FOR
Yes	COPYRIGHT
	OFFICE
	USE
	ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼a. ☐ This is the first published edition of a work previously registered in unpublished formb. ☐ This is the first application submitted by this author as copyright claimantc. ☐ This is a changed version of the work, as shown by space 6 on this application

If your answer is "Yes," give Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates ▼

None

a See instructions
before completing
this space

b. Material Added to This Work Give a brief general statement of the material that has been added to this work and in which copyright is claimed. ▼

b

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

a

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/ZIP ▼

Rafael Levy / Benson Mills / 6813 20th Avenue / Brooklyn /
NY / 11204

b

Area code and daytime telephone number

718 236-6743

Fax number

718 236-6736

Email

Bensonmills@aol.com

CERTIFICATION I, the undersigned, hereby certify that I am the

check only one ►

☒ Author☐ other copyright claimant☐ owner of exclusive right(s)☐ authorized agent of

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date

Handwritten signature (X) ▼

X

Date

10/24/04

Certificate
will be
mailed in
window
envelope
to this
address

Name ▼	BENSON MILLS CO, INC
Number/Street/Apt ▼	6813 20th Avenue
City/State/ZIP ▼	Brooklyn, NY 11204

Complete all necessary spaces
Sign your application in space 81. Application form
2. Nonrefundable filing fee in check or money
order payable to Register of Copyrights
3. Deposit materialLibrary of Congress
Copyright Office
101 Independence Avenue S E
Washington D C 20540-9000For microfilm & digital, for online
use, check the
appropriate box
on the Copyright
Office form, and
attach a
copy of the
microfilm & digital
copy to the
application.

17 U.S.C. § 405(a) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 408 or in any written statement filed in connection with the application shall be fined not more than \$2,500.

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